OLL 84-1691/1
25 April 1984

STAT MEMORANDUM FOR: DD/Pers/SP
Attn:

STAT C/ALD/OGC
Attn:

STAT FROM:
Legislation Division
Office of Legislative Liaison

SUBJECT: OMB Request for Agency Views on DOD Report on S. 1613

1. The Office of Management and Budget (OMB) has requested the Agency's views on the attached Department of Defense (DOD) report on S. 1613 by 4 May 1984. A copy of S. 1613 is also attached for your review.

2. S. 1613 would amend portions of Title 10, United States Code, to enhance the extent to which certain military former spouses may receive military medical benefits, and post and base exchange and commissary store privileges. Much like our recent discussions on apportionment rights of military former spouses, I do not believe that S. 1613 or the DOD report on S. 1613 will affect Agency equities. Consequently, I recommend that the Agency state "no objection" to the proposed DOD report.

3. Unless I hear otherwise from you by noon, 4 May 1984, I will respond to OMB that the CIA has "no objection" to DOD's report on S. 1613.

STAT

Attachments

STAT cc: Liaison

DISTRIBUTION:
Original - Addressee
1 - OLL Chrono
√1 - LEG File: Personnel General
1 - ROD Signer
1 - D/OLL
1 - DD/OLL
ROD:csh (25 April 1984)

DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301

April 11, 1984

Honorable David A. Stockman
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Stockman:

The views of the Department of Defense have been requested on S. 1613, 98th Congress, a bill, "To amend title 10, United States Code, with respect to the provision of medical benefits and post and base exchange and commissary store privileges to certain former spouses of certain members of former members of the Armed Forces."

Advice is requested as to whether there is objection to the presentation of the attached report to the Committee.

The committee has requested that this report be expedited.

Sincerely,

Werner Windus
Director
Legislative Reference Service

Enclosure

Honorable John G. Tower
Chairman
Senate Armed Services Committee
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Defense on S. 1613, 98th Congress, a bill "To amend title 10, United States Code, with respect to the provision of medical benefits and post and base exchange and commissary store privileges to certain former spouses of certain members or former members of the Armed Forces."

If enacted, this legislation would amend the definition of "dependent" contained in section 1072 of title 10, United States Code, by: (1) deleting the current provision in paragraph (F) for an

> . . . unremarried former spouse of a member or former member who (i) on the date of the final decree of divorce, dissolution, or annulment, had been married to the member or former member for a period of at least 20 years during which period the member or former member performed at least 20 years of service which is creditable in determining that member's or former member's eligibility for retired or retainer pay, or equivalent pay, and (ii) does not have medical coverage under an employer-sponsored health plan

and inserting in lieu thereof a provision to include as a dependent:

> a person who is the former spouse of a member or

former member who performed at least twenty years of service which is creditable in determining the member's or former member's eligibility for retired or retainer pay, or equivalent pay, and who on the date of the final decree of divorce, dissolution, or annulment had been married to the member or former member for a period of at least twenty years, not less than ten years of which were during the period the member or former member performed service creditable in determining the member's eligibility for retired or retainer pay;

(2) adding a provision as paragraph (G) to include also as a dependent

(G) A person (i) who is the former spouse of a member or former member, and (ii) who has a disease or disability attributable to or arising from the nature or location of the service performed by the member or former member during the marriage, or from the treatment received at a United States military medical facility;

also, limiting the health care to be provided under proposed paragraph (G) if the individual is not also covered by proposed paragraph (F), to that care necessary for the treatment of any disease or disability of that person described in clause (ii) of proposed paragraph (G);

(3) adding as a new section 1043 of Title 10, United States Code, subject to such rules and regulations as the Secretary concerned may prescribe, a dependent of a member or former member of the armed services, as defined in clause (F) or (G) of section 1072(a) of this title shall be entitled to use the services and facilities of post or base exchanges and commissary stores operated under the jurisdiction of any military department;

(4) providing that the foregoing health benefit amendments shall apply with respect to health care furnished on or after the date of enactment; and (5) for exchange and commissary privileges and health benefits the amendments shall apply regardless of the date of the applicable decree of divorce, dissolution, or annulment. We note that the bill would remove the provision in section 1072(2)(F) that a former spouse would not be eligible for health care if covered under an employer sponsored health plan. We also note the bill would add an additional group of former spouses to those eligible for dental benefits under current law.

The Department does not object in principle to disregarding the date of divorce, annulment or separation. We do not agree, however, with that part of the proposed amendment to section 1072 which eliminates the requirement that the former spouse be unremarried. Providing health care to remarried former spouses is inconsistent with limiting health care to unremarried widows and widowers. Additionally, such a provision is inconsistent

with the provisions in title 38, United States Code, which define "surviving spouse" to exclude those who are remarried as well as with similar provisions of the Social Security Act for widows who remarry before age 60.

We, furthermore, do not agree with reducing to ten years the requirement of twenty years creditable service being gained during the marriage. It is not equitable, in our view, to servicemembers themselves whose affiliation with military life must be twenty years before gaining retirement, to permit non-servicemembers to share those benefits without also being affiliated with military life for an equal period of time.

We recommend proposed paragraph (F) be amended to read

"a person who is the unremarried former spouse of a member or former member who performed at least twenty years of service which is creditable in determining the member's or former member's eligibility for retired or retainer pay, or equivalent pay, and who on the date of the final decree of divorce, dissolution or annulment had been married to the member for at least twenty years during which the member or former member performed at least twenty years of service creditable in determining the member's eligibility for retired or retainer pay."

The amended language would ensure that a full twenty years of creditable service would be necessary to qualify for the benefit and that would be the minimum permissible qualifying period of service affiliated marriage.

It is recommended that the provision for "treatment received at a United States military medical facility," proposed paragraph (G), be amended by deleting the word "military" and substituting therefor the word "government." Many dependents have received care and treatment in other non-military governmental medical facilities as, for example, those operated by the Public Health Service.

With regard to cost and budget data, the Department of Defense does not maintain statistics on the number of divorces occurring in the military community. Consequently, no one knows how many former spouses there are. However, by applying national rates to a defined population the following can be deduced:

- There are some 3,000 retirements per month or 36,000 per year, and the average age at retirement is 42-50.
- In that age group, 83 percent or 29,880 are married.

(The figures were computed by the DoD Actuary.)

We assume the servicemember must marry before age 30 in order to serve 20 years while married.

Based on U.S. Department of Commerce, Bureau of Census, Current Population Report, "Number, Timing, and Duration of Marriages and Divorces in the United States: June 1975," Series P-20, No. 297, Issued October 1976 (latest version), Table H:

- Of men who marry, 88.6 percent do so before age 30; thus, approximately 26,474 married retirees served 20 years while married.

Unpublished Census Bureau Current Population Survey of June 1980 data show 4% of married men aged 45-74 divorce after 20 years of marriage.

- 4% of 26,474 20 years married retirees is 1,059 divorced retirees after 20 years of marriage.

This group would encompass all former spouses who were married for 20 years to retired members (who had served at least 20 years) regardless of the length of time married concurrently with military service.

The total, 1,059, is roughly comparable to the one year of experience we have gained under current law. Since February 1, 1983, through January 31, 1984, 580 former spouses with 20 years of marriage while the servicemember served 20 years have sought and obtained former spouse benefits.

To estimate the size of the group of former spouses who were married 20 years to a 20 year servicemember, with 10 years of marriage during military service as proposed in the bill, we assume the servicemember must marry before age 40 in order to serve 10 years while married. Table H of the Census Bureau Report cited above shows 98.2 percent of men marry before age 40.

- 98.2 percent of 1,059 divorced 20 years married retirees is 1,040.

Therefore, we could estimate the potential number of former spouses in any one year who had been married twenty years, to a member who retired and could have been married 10 years during service would not be more than 1,040. Next, we must estimate the total of such former spouses that there may be.

The bill proposes to disregard the date of dissolution of marriage. Thus, all former spouses who otherwise qualify would be included. The bill would include remarried former spouses. If we then assume the former spouses's life expectancy is 79 and the age of divorce is (arbitrarily) 42 we could estimate there are not more than 37 times the 1,040 former spouses per year, or 38,480. This potential population must be applied to benefits usage rates to project possible costs.

Utilization rates for this population can be found in the latest (1978) DoD Beneficiary Survey. Retired-dependent females, aged 35-54 produced an average of 1.82 hospital days and 4.81 clinic visits per person per year. (Clinic visits do not include visits performed solely for lab, x-ray or dental work.) Thus, the 38,480 total potential beneficiaries under the bill can be expected to generate not more than 70,034 inpatient days and 185,088 clinic visits in the first year after bill passage.

These usages would, using standard DoD cost factors of $49 per clinic visit and $391 per inpatient day, translate into estimated costs as follows:

Cost	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988
Estimate (Millions)	36.4	37.4	38.4	39.4	40.4

These figures are only approximations. They do not account for mortality, or for disqualification by Medicare coverage, or for the unknown additional number of former spouses of active duty members of the Armed Forces. It should also be noted that if the bill were amended to require that former spouses be unremarried

to qualify for benefits as under current law, the costs may be greatly reduced. That is because the Census Bureau's unpublished June 1980 survey, cited above, shows 69 percent to 77 percent of those women who had divorced from their first marriages, and aged 45-74 at the time of the survey, did remarry.

Turning to the extension of exchange and commissary privileges to those former spouses proposed in the bill, the analysis is slightly different.

Using the same population estimating methodology as used above for medical benefits, there could be approximately 38,480 former spouses eligible for privileges in 1984 growing at a rate which would produce 42,640 eligibles in 1988, if the date of decree is no longer relevant. Currently only those unremarried former spouses whose divorce decrees were finalized after 1 February 1983 would be eligible for commissary and exchange benefits.

The annual cost to the government of supporting 38,480 additional patrons in the commissaries is estimated at $9.1M in 1984 growing to $10.1M by 1988. This is based on $.106 cost for each dollar of added sales and assumes that only 70 percent of the potential patronage would actually use the facilities and the average patron spends $3200 yearly. This represents expenses associated with manpower, administration, procurement, stockage and storage of the goods sold. This does not include the costs associated with enlarging existing facilities or constructing additional ones which in most cases are borne by the patrons. Since exchanges are operated and built predominantly with

onappropriated funds generated by sales, the estimated costs ould be absorbed by the customers, not the taxpayer.

The Department of Defense favors preserving existing privileges for those presently authorized without the addition of new groups of patrons. Most exchanges and commissaries are over-utilized, and would be unable to support a substantial increase of patronage. The Department is not in a position to absorb these additional costs. Consequently, the Department requests that Congress express clearly its intent to provide funds for these additional patrons in any legislation that grants these additional benefits.

Subject to the adoption of the foregoing recommendations and funding to cover the additional costs, the Department has no objection to this legislation.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

relief. In view of separate amendments to Section 812 which expand the statute of limitations for suits brought under that Section and permit such suits to be brought without regard to whether a complaint has been filed with the Secretary or the status of such a complaint, the amendment eliminates the separate basis for private action under Section 810(d) as unnecessary.

ENFORCEMENT BY PRIVATE PERSONS

Section 7 amends Sections 812 (a) and (c) of the present law—the private litigation provisions.

Section 812(a) is amended to:

1. Extend the statute of limitations for private actions from 180 days to two years;

2. Clarify that a private action may be filed whether or not a complaint has been filed with the Secretary, and without regard to the status of such a complaint;

3. Make explicit the aggrieved person's separate cause of action to enforce the terms of a conciliation agreement; and

4. Provide that where the Secretary or a state or local agency has obtained a conciliation agreement, no separate civil action may be filed by the person aggrieved under Title VIII except for the purpose of enforcing the terms of the agreement.

Other features of present Section 812(a) are retained without substantive change. Section 812(b) is also undisturbed.

Revised Section 812(c) authorizes the court to grant as relief, as it deems appropriate, actual damages, any permanent or temporary injuction, temporary restraining order, and other relief, including punitive damages. As under current law, "actual damages" recoverable as a result of a discriminatory housing practice are intended to include intangible damages, such as emotional distress and humiliation, as well as out-of-pocket costs. See *Jeanty* v. *McKay & Poague, Inc.*, 496 F.2d 1119 (1974); *Steele* v. *Title Realty Co.*, 478 F.2d 380 (10th Cir. 1973). The dollar limit on punitive damages is removed—leaving the amount of such damages to the discretion of the court—and the attorney's fee clause is adjusted to follow the format of the Civil Rights Attorney's Fee Awards Act, 42 U.S.C. 1988. (A comparable attorney's fee provision appears in amended Section 810(d).) Under current law, an attorney's fee may be awarded only to a prevailing plaintiff and only if the court finds that the plaintiff is financially unable to assume such fee.

A new Section 812(d) is added to the Act, providing that the Attorney General may intervene in any private civil action brought under Section 812, if the Attorney General certifies that the case is of general public importance. Upon such intervention, the Attorney General may obtain such equitable and declaratory relief as may be appropriate.

SPECIAL JURISDICTION OF THE ATTORNEY GENERAL

To augment the new litigation authority for the Attorney General contained in revised Section 810(d) of the Act, the bill provides in Section 8 for amendments to the Attorney General's existing enforcement powers contained in Section 813 of the present law. In addition to the existing authority of the United States to sue for injunctive relief, the court is empowered in an action brought under Section 813 to assess a civil penalty, "to vindicate the public interest," of up to $50,000 against a respondent found to have violated the statute and to assess a penalty of up to $100,000 for a subsequent violation by the same respondent.

TECHNICAL AND CONFORMING AMENDMENTS

Section 9 contains a series of technical and conforming amendments. They include confirmation of the authority of the Secretary to enforce an interrogatory, as well as a subpoena, under Section 811. Section 10 adds "handicap" as a protected class under Title IX of the Civil Rights Act of 1968, which imposes criminal penalties for intimidating or interfering with any person in the exercise of rights protected by the Fair Housing Act.

APPLICABILITY

Section 11 provides that the new enforcement powers set out in the bill shall be applicable to pending complaints, and provides that the bill's revised time requirements shall not be construed to shorten the time for filing a civil action with regard to complaints filed before the Amendments Act's effective date. This latter provision is necessary because, under court decisions, some complainants have been permitted to file suits very late where the Secretary's case-closing letter was received beyond the 180-day statutory filing period.

[From the Washington Post, June 15, 1983]

ENFORCING FAIR HOUSING

In a welcome announcement, the administration has now said it will address the high priority civil rights issue of enforcing the 15-year-old law against discrimination in housing sales and rentals. Under that law, complaints are subject to conciliation by the Department of Housing and Urban Development. But if conciliation fails, private individuals must bring their own lawsuits in court to enforce their rights. The Justice Department can sue only violators who engage in a widespread pattern or practice of discrimination.

It has been clear for some time that this enforcement mechanism is ineffective. Congress has in the past considered but not enacted remedial legislation. Last month, Sen. Charles Mathias and 57 cosponsors introduced a bill with the backing of the Leadership Conference on Civil Rights. Now HUD Secretary Pierce has released details of a forthcoming administration bill.

Both proposals provide a new enforcement mechanism for individuals whose rights have been violated. Both would continue to refer cases to state agencies where appropriate. Both look to conciliation as a first step. Under either bill, a plaintiff could apply for a temporary restraining order to prevent the sale or rental of the housing in question during adjudication of the claim. Sen. Mathias proposes civil penalties of up to $10,000 on a first offense; the administration bill allows a $50,000 penalty in such circumstances.

The major difference between the two bills is the method of enforcement. The Mathias bill authorizes administrative law judges to receive complaints and issue orders. Their decisions would be reviewable first by a new Fair Housing Review Commission and eventually by federal courts of appeals. Civil rights groups believe that this kind of specialized administrative enforcement is faster than court suits. The administration disagrees; the bill Secretary Pierce describes would have the Justice Department bring suit in federal court on behalf of individuals when the HUD secretary so recommends. The essential element, though, is in both bills; the burden of enforcement is on the government rather than on the individual victim.

Administration action on fair housing is not only appropriate and right, it is politically smart. No less so is a recent announcement by Assistant Attorney General William Bradford Reynolds that he will tour Mississippi with black leaders to investigate possible violations of the Voting Rights Act. Steps like these counter the widely held belief that this administration has been at best indifferent to civil rights concerns that affect not only minorities but the general perception of American society as just and fair.

By Mr. TRIBLE (for himself, Mr. BINGAMAN, and Mr. THURMOND):

S. 1613. A bill to amend title 10, United States Code, with respect to the provision of medical benefits and post and base exchange and commissary store privileges to certain former spouses of certain members or former members of the Armed Forces; to the Committee on Armed Services.

PROVISION OF BENEFITS TO FORMER SPOUSES OF CERTAIN MEMBERS AND FORMER MEMBERS OF THE ARMED FORCES

Mr. TRIBLE. Mr. President, all of us appreciate the sacrifices made by our men and women in uniform. Separation from loved ones, frequent relocation, overseas duties, and a lack of roots are all part of military career. What is often unappreciated is that military spouses endure many of the same hardships. They, too, endure the separation and nomadic way of life that characterizes military service.

Moreover, military spouses often must sacrifice their own autonomy and careers. If they are to provide the vital support role essential to military morale, they must forgo many of the opportunities available to civilian spouses.

The Congress has made efforts to compensate servicemen and servicewomen for their efforts. Regrettably, its efforts to meet the needs of their self-sacrificing spouses has been inadequate. This failure is evident in the treatment of former spouses.

Today I am introducing legislation, along with my colleagues Mr. BINGAMAN and Mr. THURMOND, which would begin to redress this situation. It would provide medical coverage as well as commissary and post exchange privileges for ex-spouses who meet revised eligibility criteria, regardless of the date of divorce, dissolution, or annulment of the marriage.

The Uniformed Services Former Spouses Protection Act, title X of the 1983 Department of Defense Authorization Act, was an important initial step in eliminating inequities and securing necessary benefits for former spouses. It was, at least, official recognition of the important role of these individuals. However, the provisions of this measure are insufficient. We have not provided necessary protection and support for long-term spouses who have clearly earned it and who desperately need it.

The eligibility requirements for continued health care, as outlined in the Uniformed Services Former Spouses Protection Act, are excesively restrictive. To qualify, a spouse cannot remarry and must have been married to a service member for at least 20 years, during which the service member performed at least 20 years of creditable

service. In addition, the spouse cannot have medical coverage under an employer-sponsored health plan in order to qualify for health care in military medical facilities or under the civilian health and medical program for the uniformed services (CHAMPUS). And, the health care provisions of this act are prospective in nature, applicable only to divorces granted after February 1, 1983.

A former spouse who has been married to a service member for 18 years, during which the service member performed 18 years of creditable service, does not qualify for continued health care. Unfortunately, this situation is not unusual. Many servioe members marry after joining the servcie and their former spouses are left without any protection or benefits.

These former spouses have, in many cases, been unable to establish careers as a result of constant relocation, and without marketable skills and experience, these individuals have a difficult time finding employment. Achieving financial security and obtaining medical insurance are extremely difficult—in some instances impossible to achieve.

Clearly, many long-term military spouses are not able to receive desperately needed benefits. The circumscriptive language of last year's act prevents individuals who may not qualify or be able to afford health insurance, from receiving deserved protection. Moreover, these same individuals are deprived of the economical shopping traditionally available at a commissary or post exchange.

In an effort to eliminate these inequities and to continue the efforts initiated in the 97th Congress, I am introducing legislation which revises the health care provisions and the commissary and post exchange provisions of the Uniformed Services Former Spouses Protection Act. This measure redefines the eligibility requirements for continued health care and commissary and post exchange privileges.

A former spouse of a service member or former service member who performed at least 20 years of creditable service, and, on the date of divorce, had been married to the member for at least 20 years—not less than 10 years of which were during the period in which the member performed creditable service—would be eligible for continued health care. The date of divorce, dissolution, or annulment of the marriage would no longer be a factor. Former spouses who meet these new eligibility requirements would also retain commissary and post exchange privileges.

I believe that the revised eligibility requirements would remove excessive restrictions which penalize former spouses who contributed to a military career, thus addressing the significant concerns of many former spouses who are left unprotected by the provisions of last year's act. I urge my colleagues to join me in pressing for timely consideration of this measure.

Mr. President, I ask unanimous consent that the text of the bill appear in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1613

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1072 (2) of title 10, United States Code, is amended—

(1) by striking out "and" at the end of clause (E); and

(2) by striking out clause (F) and inserting in lieu thereof the following:

"(F) a person who is the former spouse of a member or former member who performed at least twenty years of service which is creditable in determining the member's or former member's eligibility for retired or retainer pay, or equivalent pay, and who on the date of the final decree of divorce, dissolution, or annulment had been married to the member or former member for a period of at least twenty years, not less than ten years of which were during the perior the member or former member performed service creditable in determining the member's eligibility for retired or retainer pay; and

"(G) a person (i) who is the former spouse of a member or former member, and (ii) who has a disease or disability attributable to or arising from the nature or location of the service performed by the member or former member during the marriage, or from treatment received at a United States military medical facility.".

(b) Section 1077 of such title is amended by adding at the end thereof the following new subsection:

"(c) In the case of a person covered by section 1072(2)(G) of this title who is not also covered by section 1072(2)(F) of this title, the only health care that may be provided under section 1076 of this title is health care necessary for the treatment of any disease or disability of that person described in subclause (ii) of section 1072(2)(G) of this title.".

SEC. 2. (a) Chapter 53 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 1043. Post exchange and commissary store privileges for certain former spouses of certain members or former members of the armed forces

"Subject to such rules and regulations as the Secretary concerned may prescribe, a dependent of a member or former member of the armed forces, as defined in clause (F) or (G) of section 1072(2) of this title, shall be entitled to use the services and facilities of post or base exchanges and commissary stores operated under the jurisdiction of any military department.".

(b) The table of sections at the beginning of chapter 53 of such title is amended by adding at the end thereof the following new item:

"103. Post exchange and commissary store privileges for certain former spouses of certain members or former members of the armed forces.".

SEC. 3. (a) The amendments made by the first section of this Act shall apply with respect to health care furnished on or after the date of the enactment of this Act and in the case of a former spouse regardless of the date of the applicable decree of divorce, dissolution, or annulment.

(b) The amendments made by section 2 of this Act shall apply in the case of a former spouse regardless of the date of the applicable decree of divorce, dissolution, or annulment.

Mr. BINGAMAN. Mr. President, I am pleased to join my distinguished colleague from Virginia, Senator PAUL TRIBLE, as an original cosponsor of this bill.

Unlike Senator TRIBLE, I was not a member of the 97th Congress and thus did not have a chance to participate in the debate over the Armed Services Former Spouses Protection Act, which was passed last August as title X of the 1983 Defense Authorization Act (Public Law 97-252). That clearly was a landmark piece of legislation. In it the Congress dealt for the first time with the problems faced by divorced spouses of members of the Armed Forces. As Representative PAT SCHROEDER said at the time "it is a great first step."

But problems and inequities remain to be dealt with. When I reviewed this legislation this spring, I was particularly concerned that the provisions dealing with medical benefits and commissary and exchange privileges were too restrictive. Public Law 97-252 extends commissary and exchange privileges to former military spouses only if; First, the final decree of divorce or annulment, et cetera was issued on or after February 1, 1983; second, the couple was married for at least 20 years during which the military member performed at least 20 years of creditable military service; and third, the former spouse has not remarried. To qualify for medical benefits there is in addition the requirement that the former spouse not be enrolled in any employer-sponsored health plan.

The bill we are introducing today would significantly extend eligibility for these benefits. There is still a requirement for 20 years of marriage and 20 years of creditable military service, but the overlap must be only 10 years. Eligibility for these benefits is made retroactive for all former spouses, who meet this 20-20-10 criterion, whether or not they have remarried or are enrolled in an employer-sponsored health plan.

This bill parallels H.R. 2715 which was introduced in April by the distinguished member of the House Armed Services Committee, G. WILLIAM WHITEHURST of Virginia, and which currently has 46 cosponsors in the House. The provisions of the two bills on eligibility for medical benefits are the same. The House bill does not deal with eligibility for commissary and exchange privileges.

The Senate Armed Services Committee in its report on the 1984 DOD Authorization bill has asked the Defense Department to estimate the costs of extending eligibility for medical, commissary, and exchange benefits to former military spouses. Various alternatives for extending eligibility are to

be evaluated. The Defense Department's report is due by March 1, 1984 and will obviously be useful in the Armed Services Committee's consideration of this issue during next year's Defense Authorization process. I look forward to working with my colleagues on the Armed Services Committee on this legislation and hope that they will join me in supporting it. The 98th Congress must build on the solid work of the 97th and provide further recognition for the sacrifices made by these former military spouses during their spouses' military careers. The spouses who faced the hardships of military life should not be forgotten.

By Mr. HEINZ (for himself, Mr. HATCH, Mr. BRADLEY, and Mr. PACKWOOD):

S. 1614. A bill to amend title XIX of the Social Security Act to allow States to implement coordinated programs of acute and long-term care for those individuals who are eligible for both medicare and medicaid; to the Committee on Finance.

HEALTH CARE COORDINATION ACT OF 1983

Mr. HEINZ. Mr. President, I am pleased to introduce today with my colleagues Senators HATCH, BRADLEY, and PACKWOOD the Health Care Coordination Act of 1983. This bill is the next important step in the reform of long-term care health and support services for those with chronic illnesses and disabilities.

The Health Care Coordination Act amends title XIX of the Social Security Act to allow States to implement comprehensive and coordinated programs of acute and long-term care for persons eligible for both medicare and medicaid. There are approximately 4 million dually eligible persons nationwide, with over 160,000 in my home State of Pennsylvania. Mr. President, this population is truly in need of the kind of care that would be provided with this bill.

This bill would permit States to combine medicare and medicaid resources, for the first time, to provide expanded home and community-based services to the dually eligible population. Each State program would provide the entire range of health alternatives, ranging from home and community-based services to hospital and nursing home care and physician services. Benefits assured by this bill would include all medicare parts A and B services, all services provide under the State medicaid plan, case management and case assessment and other services, such as homemaker and home health aide—as needed. By combining medicare and medicaid resources, overall savings can be achieved by the appropriate use of acute hospital or nursing home care.

There can be little doubt that long-term care reform is greatly needed. According to the Health Care Financing Administration, over $40 billion was spent in this country in 1982 for long-term care, which is approximately 15 percent of total national personal health care expenditures. These expenditures include: First, public and private expenditures for nursing homes; second, expenses for long-term care hospitals and long-term care provided in short-term hospitals; third, medicare expenditures for home health care, and fourth, the cost of providing care to those who are inappropriately backed up in acute care hospital beds awaiting nursing home care. In 1982, over $27 billion was spent on nursing home care, alone. Over $10 billion was spent for long-term care provided in long-term care hospitals and acute care hospital beds. A substantial portion of this $40 billion is now being spent on often inappropriate and overly costly institutional health services for the chronically ill, who could frequently be more appropriately cared for with home and community-based services.

The National Center for Health Statistics has projected that, absent legislative reforms, the nursing home population will increase by 500,000 per decade in the coming years. Between 10 and 40 percent of this population could avoid nursing home placement if home and community-based services were more readily available. It is time that we in Congress act to provide such services, in order to achieve savings and better care through the prevention of inappropriate hospital and nursing home care.

The Health Care Coordination Act of 1983 seeks to confront and change some of the traditional barriers to appropriate care. Medicaid, the source of about 90 percent of all public funds spent on long-term care, provides coverage for a range of institutional services to the categorically or medically needy population. The medicare program, on the other hand, provides skilled services for a limited period of time; it is neither intended nor designed to serve those in need of long-term care. This bill attempts to overcome medicare and medicaid's structural differences—with this bill, States may use both Federal and State dollars to provide the kind of care that is usually preferred by families and for those in need of long-term care services.

Mr. President, just last week, at a Special Committee on Aging hearing in Harrisburg, Pa., witness after witness spoke of the need for expanded home and community-based services. Based on testimony presented at the hearing, I am now convinced that the medicare and medicaid programs should be expanded to provide additional community-base services for those who are able to remain at home. The chronically ill, covered by both medicare and medicaid, are today all too often thrown into a whirlwind of health care services. Typically, the cycle begins with acute hospitalization, then home health care until they no longer qualify for skilled home health care under medicare, than their health status declines, then they are hospitalized again and the cycle goes on and on.

The Health Care Coordinated Act of 1983 provides a financing mechanism that will permit comprehensive services to be provided within strict incentives to control costs. For States participating in the program, medicare would pay a capitated rate, the average adjusted per capita cost, or the AAPCC, for each enrolled participant. The AAPCC, used to determine medicare's share of program costs, is based on current spending for medicare services. Medicare would make payments to the State on a per capita basis for each individual enrolled in the program. The amount paid by medicare for those who are not frail would be 95 percent of the noninstitutional AAPCC. Payments for those persons designated as "frail" would equal 95 percent of the institutional AAPCC. For the purpsoes of this bill, persons considered "frail" are: First, inpatients in a SNF or ICF; or second, determined by the State to require the level of care provided in SNF's or ICF's; or third, dependent on personal assistance on at least two of the defined activities of daily living. Any additional cost of providing services to the enrolled population in excess of total medicare payments will be paid by medicaid.

There are several advantages in combining medicare and medicaid resources for this population. First, by allowing States to use medicare dollars, the bill recognizes that the current medicare benefit package is not well designed to meet the needs of the chronically ill—who currently use approximately 25 percent of acute medicare hospital days. Also, the bill removes traditional barriers to home and community-based reimbursement under medicare such as the skilled care and homebound requirements for home care and the skilled care requirement for nursing home care.

Second, the combination of medicare and medicaid resources into one program under State auspices removes current and perverse incentives to shift costs between the two programs. Establishment of a single program, responsible for the whole range of acute and long-term care services, will help to insure that the most appropriate level of care is provided at all times.

Third, the bill makes it possible for the State to capture savings from high-cost hospitalization that can be used to fund expanded home and community-based services. Savings achieved under medicaid alone—such as with the section 2176 community care waivers—will probably never save a sufficient amount to finance adequate additional services. By combining medicare and medicaid as we do in this bill, truly significant savings can be captured by avoiding unnecesary hospitalization. Demonstration projects, such as project OPEN, at Mount